

J. S. BOWERS

IBLA 83-800

Decided March 20, 1984

Appeal from decisions of Nevada State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio. N MC 192690 through N MC 192692, N MC 193658, and N MC 193659.

Affirmed.

1. Mining Claims: Lands Subject to -- Segregation -- Small Tract Act: Classification

BLM may properly declare a mining claim null and void ab initio where located on land segregated from mineral entry on the date of location by a small tract classification order.

APPEARANCES: J. S. Bowers, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

J. S. Bowers has appealed from two decisions of the Nevada State Office, Bureau of Land Management (BLM), dated July 7, 1983, declaring the Mad Dog #9, Mad Dog #9A, Mad Dog Fraction, Fraction J&L, and Fraction T&D lode mining claims, N MC 192690 through N MC 192692, N MC 193658, and N MC 193659, null and void ab initio.

Appellant's mining claims were located April 22 and 30, 1981, and filed for recordation with BLM on April 24 and May 4, 1981, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b) (1981). In its July 1983 decisions, BLM declared appellant's mining claims null and void ab initio to the extent they included land in the W 1/2 SW 1/4 and the W 1/2 W 1/2 E 1/2 SW 1/4 sec. 28, T. 16 N., R. 21 E., Mount Diablo meridian, Nevada, because such land had been "closed" to mineral entry "at the time the subject claims were located." BLM referred to a small tract classification, Nev-049908, issued on November 17, 1961, which classified the affected land as suitable for disposal under section 1 of the Act of June 1, 1938, as amended, 43 U.S.C. § 682a (1976) (repealed by section 702 of FLPMA, P.L. 94-579, 90 Stat. 2787

(1976)), and which thereby segregated the land from mineral entry pursuant to 43 CFR 2731.2(b) (1977).
1/ See 26 FR 10980 (Nov. 23, 1961).

Although BLM declared the claims null and void only to the extent they included the land described in sec. 28, it is clear that all the land covered by appellant's claims had been segregated from mineral entry. Appellant's certificates of location state that the claims are situated in secs. 28 and 33, T. 16 N., R. 21 E., Mount Diablo meridian, Nevada. Maps submitted to BLM with the certificates of location indicate that the claims are more specifically located in the SW 1/4 SW 1/4, the W 1/2 W 1/2 NE 1/4 SW 1/4 and the W 1/2 W 1/2 SE 1/4 SW 1/4 sec. 28 and the NW 1/4 NW 1/4 and the W 1/2 W 1/2 NE 1/4 NW 1/4 sec. 33, T. 16 N., R. 21 E., Mount Diablo meridian, Nevada. Such land was subject to small tract classification Nev-049908, which was in effect on the dates of location. 2/

In his statement of reasons for appeal, appellant notes that the mining claims have been staked "in good faith" and have "values" and that the land has been surveyed and all necessary assessment work done. Appellant contends that there is no evidence in the Lyon County records or in the BLM land status maps of the small tract classification.

[1] The classification order provided in part that the classification segregated the affected land "from all appropriation, including locations under the mining laws." 26 FR 10980 (Nov. 23, 1961). The applicable regulation, 43 CFR 2731.2(b) (1977), further provided that lands classified under the Act of June 1, 1938, as amended, supra, "will be segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof." This regulation was subsequently deleted, after repeal of the underlying

1/ BLM also noted that classification Nev-049908 was vacated in part, effective Feb. 5, 1982, as to the land in sec. 28, T. 16 N., R. 21 E., Mount Diablo meridian, Nevada, thereby opening the land to mineral entry. See 47 FR 5471 (Feb. 5, 1982). BLM stated that "subject to valid intervening rights of third parties or the United States, the claims may be relocated." Appellant indicates on appeal that he has relocated the subject mining claims.

2/ The small tract classification specifically referred in part to the following land:

"Mount Diablo Meridian, Nevada

T. 16 N., R. 21 E.

Sec. 28, W 1/2 SW 1/4, W 1/2 W 1/2 E 1/2 SW 1/4;

* * * * *

Sec. 33, NW 1/4 NW 1/4, W 1/2 W 1/2 NE 1/4 NW 1/4,
 N 1/2 SW 1/4 NW 1/4, W 1/2 NW 1/4 SE 1/4 NW 1/4."

26 FR 10980 (Nov. 23, 1961). The classification was vacated as to all these lands opening them to mineral entry on Feb. 5, 1982. 47 FR 5471 (Feb. 5, 1982). This is reflected in the serial register page for this classification order, which indicates that the order remained in effect as to this land until Feb. 5, 1982. The copy of the master title plat in the record cannot confirm the applicability of the classification order because it is dated Apr. 20, 1983, after the order was vacated as to the subject land.

statutory authority. See 45 FR 39420 (June 10, 1980). Nevertheless, section 701(c) of FLPMA, P.L. 94-579, 90 Stat. 2786 (1976), provides in part that all classifications "in effect as of the date of approval of this Act [October 21, 1976] shall remain in full force and effect until modified under provisions of this Act or other applicable law." Accordingly, small tract classification Nev-049908 remained in full force and effect with respect to the subject land until February 5, 1982. It is well established that where land is not open to mineral entry a mining claim located on such land at that time is properly declared null and void ab initio. Ernest L. Brewington, 73 IBLA 167 (1983), and cases cited therein. We have no reason to doubt that appellant acted in good faith in locating the subject mining claims; however, we must conclude that where appellant's mining claims were located on land not available for entry, BLM properly declared the claims null and void ab initio.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

